

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BEN ROTEN,	:
	:
Plaintiff,	:
	:
v.	: Civil Action No. 08-081-JJF
	:
CARL DANBERG, et al.,	:
	:
Defendants.	:

ORDER

NOW THEREFORE, IT IS HEREBY ORDERED that:

1. The Clerk of the Court shall cause a copy of this Order to be mailed to Plaintiff.

2. Plaintiff's Motion For Appointment Of Counsel is **DENIED** without prejudice. (D.I. 9.)

3. Plaintiff's Motion For Response From The Defendants is **DENIED**. (D. I. 10.)

4. Plaintiff's claims against Defendants Carl Danberg, Mike Deloy, Jill Mosser, Director of CMS, Diane Miller, and Richard Kearney are **DISMISSED** as frivolous and for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1). They are **DISMISSED** as Defendants in the case.

5. The Court has identified what appears to be a cognizable Eighth Amendment claim against Defendant Dr. Lawrence McDonald. Plaintiff is allowed to **PROCEED** against this Defendant.

IT IS FURTHER ORDERED that:

1. Pursuant to Fed. R. Civ. P. 4(c)(2) and (d)(2), Plaintiff has provided the Court with **original** "U.S. Marshal-285" forms for the **remaining Defendant Dr. Lawrence McDonald**, as well as for the Attorney General of the State of Delaware, 820 N. FRENCH STREET, WILMINGTON, DELAWARE, 19801, pursuant to Del. Code Ann. tit. 10, § 3103(c). **Plaintiff has also provided the Court with copies of the Complaint (D.I. 2) for service upon the remaining Defendant and the Attorney General.**

2. The United States Marshal shall forthwith serve a copy of the Complaint and amendments (D.I. 2), this Order, a "Notice of Lawsuit" form, the filing fee order(s), and a "Return of Waiver" form upon the Defendant(s) so identified in each 285 form.

3. Within **thirty (30) days** from the date that the "Notice of Lawsuit" and "Return of Waiver" forms are sent, if an executed "Waiver of Service of Summons" form has not been received from a Defendant, the United States Marshal shall personally serve said Defendants pursuant to Fed. R. Civ. P. 4(c)(2) and said Defendants shall be required to bear the cost related to such service, unless good cause is shown for failure to sign and return the waiver.

4. Pursuant to Fed. R. Civ. P. 4(d)(3), a Defendant who, before being served with process timely returns a waiver as requested, is required to answer or otherwise respond to the

complaint within **sixty (60) days** from the date upon which the complaint, this order, the "Notice of Lawsuit" form, and the "Return of Waiver" form are sent. If a Defendant responds by way of a motion, said motion shall be accompanied by a brief or a memorandum of points and authorities and any supporting affidavits.

5. No communication, including pleadings, briefs, statement of position, etc., will be considered by the Court in this civil action unless the documents reflect proof of service upon the parties or their counsel.

6. **NOTE: ***** When an amended complaint is filed prior to service, the Court will **VACATE** all previous service orders entered, and service **will not take place**. An amended complaint filed prior to service shall be subject to re-screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(a). *******

7. **NOTE: ***** Discovery motions and motions for appointment of counsel filed prior to service will be dismissed without prejudice, with leave to refile following service. *******

May 13 2008
DATE

Joseph D. Fama
UNITED STATES DISTRICT JUDGE